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2013 IL App (4th) 130235-U

NO. 4-13-0235

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 2, 2013

Carla Bender

4th District Appellate
Court, IL

In re: MARK P., a Person Found Subject to)	Appeal from
Administration of Psychotropic Medication,)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,)	Sangamon County
Petitioner-Appellee,)	No. 13MH136
v.)	
MARK P.,)	Honorable
Respondent-Appellant.)	Steven H. Nardulli,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to sustain the trial court's order authorizing the involuntary administration of psychotropic medication for 180 days.
- ¶ 2 On February 27, 2013, the State filed a petition for involuntary administration of psychotropic medication pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/2-107.1 (West 2012)), against respondent, Mark P. Following a hearing on the petition, the trial court granted the petition and entered an order authorizing involuntary administration of psychotropic medication to last 180 days. Respondent appeals, arguing the trial court failed to comply with the Mental Health Code's procedural requirements and the evidence was insufficient to authorize the involuntary administration of psychotropic medication. We disagree and affirm the trial court's order authorizing involuntary administration of psychotropic medication.

¶ 3

I. BACKGROUND

¶ 4

On February 27, 2013, the State filed a petition for involuntary administration of psychotropic medication naming Mark P. as respondent. The same day, the trial court ordered counsel appointed to respondent and set the cause for hearing on March 1, 2013. The court granted respondent's motion to continue, and the matter was reset for March 8, 2013.

¶ 5

On March 8, 2013, the trial court held the hearing on the petition. Respondent's counsel informed the court respondent would not be present, requiring his presence would "be detrimental to his physical and mental health," and respondent did not wish to attend the proceedings. The hearing on the matter was brief, with the State presenting only the testimony of Dr. Sreehari Patibandla.

¶ 6

Dr. Patibandla is a psychiatrist at the Andrew McFarland Mental Health Center (McFarland) in Springfield, Illinois. Dr. Patibandla was admitted as an expert and testified he had been treating respondent for "close to [2 1/2] years." Respondent had been diagnosed with schizoaffective disorder for the past 10 years. Respondent experiences grandiose delusional thoughts, believes he has invented an energy solution and is the only one who knows about it, believes "people are after him," cannot focus on any conversation, has rambling thought processes, and has been unable to cooperate with his attorney. Respondent also believes he "figured out what was wrong in patients with mental illness and schizophrenia *** and believes he has a solution for those." Dr. Patibandla indicated respondent is aggressive when not medicated.

¶ 7

Dr. Patibandla further explained he believed respondent was presently suffering from these symptoms and refused treatment by psychotropic medication. Dr. Patibandla opined

respondent does not have the capacity to make reasoned decisions about his treatment because respondent does not believe he has a mental illness or needs to take medication for it. Dr. Patibandla also concluded respondent exhibited a deterioration of his ability to function due to the mental illness. In making this conclusion, Dr. Patibandla explained respondent's "ability to carry a conversation has deteriorated over the duration of this illness and [respondent] cannot sit down and work with his attorney in helping him defend in his criminal case." Dr. Patibandla further explained respondent "could not even participate in treatment groups without arguments and rambling pressure speech."

¶ 8 Dr. Patibandla's first choice medications were one to eight milligrams of lorazepam, orally, for agitation and 40 to 240 milligrams of ziprasidone, orally, for psychosis. Dr. Patibandla's alternative medication choice was an intramuscular injection of the same drugs. Lorazepam "helps [respondent] stay calmer and be able to conduct himself without too much anxiety and agitation." Ziprasidone "helps [respondent] organize his thoughts better and be able to cooperate with his attorney."

¶ 9 During Dr. Patibandla's testimony, the State moved to admit an exhibit into evidence, and it was admitted with no objection. The exhibit detailed the possible side effects of both lorazepam and ziprasidone when taken orally or by intramuscular injection and other information about each drug. Dr. Patibandla testified he was not worried about respondent suffering any of the listed side effects. Respondent had been treated with these medications and had not suffered any side effects.

¶ 10 Dr. Patibandla further explained this was the third petition for involuntary medication regarding respondent and respondent had been on the requested medication for the

past three months. The trial court interjected, "[t]he record should reflect that I presided over at least one of those hearings, and I'm going to take judicial notice of the testimony that was presented at that time." The court did not make any specific reference as to the testimony of which it was taking judicial notice, and counsel for respondent raised no objection.

¶ 11 The requested medication resulted in a vast improvement in respondent during the previous order of involuntary medication. Respondent's sleep cycles "increased quite well," meaning respondent slept through the night and was awake during the day. Respondent could now carry on limited conversations and even "strategize as to whether he wants to discuss certain issue[s] *** depending on what his intent is." Dr. Patibandla noted respondent refused to speak with him lately because respondent believed Dr. Patibandla was "responsible for some of the decisions that [were] made in [respondent's] legal case as well as the medication petitions." Respondent had improved, however, to the point where Dr. Patibandla was recommending fitness to stand trial; but for this recommendation to be sustained, respondent would have to continue on the medication.

¶ 12 Dr. Patibandla attempted to speak with respondent concerning the benefits, risks, and side effects of lorazepam and ziprasidone. Respondent knew Dr. Patibandla was presenting the petition at issue, and stated he did not want to discuss anything with Dr. Patibandla. Respondent took the copy of the petition and the side effect information sheets from Dr. Patibandla. Dr. Patibandla approached respondent the morning before the hearing and asked respondent if he had any questions or needed any explanations concerning the proposed medication. Respondent stated only that he did not want to speak with Dr. Patibandla. Respondent does not have a power of attorney for healthcare and does not have any written

mental health treatment declarations.

¶ 13 Dr. Patibandla opined the benefits of the proposed treatment clearly outweighed the potential harm of the side effects. Dr. Patibandla discussed alternative treatment options with respondent and gave respondent a written list of alternative treatments. Respondent did not say anything about the list to Dr. Patibandla. Dr. Patibandla explained respondent was not appropriate for nonmedication forms of treatment because he refused to participate and was otherwise uncooperative. Dr. Patibandla opined the proposed medication would be the least-restrictive alternative for respondent.

¶ 14 Dr. Patibandla's petition alleged specific testing and procedures were necessary to administer the proposed medication. Specifically, respondent would be required to undergo a "complete blood count, Comprehensive Metabolic Profile, Lipid Panel, Electrocardiograph as needed," and "physical and psychiatric assessments to monitor for adverse effects and progress." Dr. Patibandla explained these tests were necessary for the safe and effective administration of the proposed medication and were standard for the kind of medication proposed.

¶ 15 At the conclusion of the hearing, the trial court made the following oral findings:

"Based upon the evidence, I think the State has established, by clear and convincing evidence, that [respondent] does suffer from a mental illness; that, that has been demonstrated by deterioration of his ability to function and the threatening or disruptive behavior that he periodically engaged in.

This illness has existed for an extended period of time in that he continues with the presence of symptoms. The benefits of

the treatment that have been proposed outweigh the harm. He lacks, [respondent], lacks the capacity to make reasonable decisions about the treatment.

Other less restrictive alternatives have been explored and are inappropriate. The testing procedures that are requested are necessary for the effective and safe administration for this treatment. He has been advised of the benefits, side effects, and alternatives to treatment, and he does not have—there is no evidence that he has executed power of attorney for health care. This order is not to exceed 180 days."

¶ 16

The trial court also entered a written order, providing in part:

"This matter coming to be heard on the petition of Dr. Sreehari Patibandla and the court having found that:

- 1) The individual has a serious mental illness
- 2) The individual exhibits any one of the following: a) deterioration of his or her ability to function, b) suffering; or c) threatening or disruptive behavior;
- 3) The illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (2) above, or the repeated episodic occurrence of these symptoms;
- 4) The benefits of the treatment will outweigh the harm;
- 5) The individual lacks the capacity to make a reasoned

decision about the treatment;

6) Other less restrictive services were explored and found inappropriate;

7) Testing and/or other procedures are essential for the safe and effective administration of treatment and;

8) A good faith attempt was made to determine whether the individual has executed a Power of Attorney for Health Care or a declaration for mental health treatment.

IT IS HEREBY ORDERED THAT THE PETITION IS GRANTED."

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. The Appeal Fits Into a Recognized Exception to the Mootness Doctrine

¶ 20 Respondent contends his appeal fits within a recognized exception to the mootness doctrine. The State concedes this point, and we accept the State's concession.

¶ 21 Because the order from which respondent appeals expired by its own terms on September 3, 2013, this case is moot. See *In re Barbara H.*, 183 Ill. 2d 482, 490, 702 N.E.2d 555, 559 (1998). As a general rule, Illinois courts do not decide moot cases or render advisory opinions. *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). Illinois courts have recognized several exceptions to the mootness doctrine in the mental health context.

¶ 22 The "capable of repetition yet avoiding review" exception is one such exception. The "capable of repetition yet avoiding review" exception has two requirements. *Id.* at 358, 910

N.E.2d at 82. "First, the challenged action must be of a duration too short to be fully litigated prior to its cessation. Second, there must be a reasonable expectation that 'the same complaining party would be subjected to the same action again.'" *Id.* (quoting *Barbara H.*, 183 Ill. 2d at 491, 702 N.E.2d at 559).

¶ 23 Section 2-107.1 of the Mental Health Code permits the trial court to order involuntary administration of psychotropic medication for periods of 90 or 180 days. 405 ILCS 5/2-107.1(a-5)(5) (West 2012). The 90- and 180-day periods authorized by the Mental Health Code are too short to permit appellate review because in nearly every case, the order authorizing the involuntary administration of psychotropic medication will expire on its own terms before appellate review can be completed. *Barbara H.*, 183 Ill. 2d at 492, 702 N.E.2d at 559. To apply the mootness doctrine in cases such as this would leave those subject to involuntary administration of psychotropic medication with no channel to challenge the trial court's orders and would render the appellate rights in section 3-816 of the Mental Health Code a nullity. *Id.*, 702 N.E.2d at 559-60.

¶ 24 In this case, respondent had been subject to an order for involuntary medication two times prior to the order at issue. Although Dr. Patibandla testified he was going to recommend respondent fit to stand trial, Dr. Patibandla also indicated as a condition to the fitness recommendation, respondent would need to remain on the current medication. As a result of respondent's diagnosed mental illness, respondent will likely again confront section 2-107.1 proceedings. Accordingly, we will address the merits of respondent's appeal and need not address the other exceptions to the mootness doctrine asserted by respondent.

¶ 25 B. The Sufficiency of the Evidence

¶ 26 Respondent argues the State failed to present sufficient evidence to find him subject to the involuntary administration of psychotropic medication. Specifically, respondent takes issue with the court's findings regarding (1) respondent's threatening and disruptive conduct, (2) the proposed treatment's benefits and side effects, and (3) the 180-day order entered by the trial court.

¶ 27 *1. Standard of Review*

¶ 28 A reviewing court will not reverse the trial court's decision to authorize the involuntary administration of psychotropic medication unless it was against the manifest weight of the evidence. *In re A.W.*, 381 Ill. App. 3d 950, 957, 887 N.E.2d 831, 838 (2008). "A judgment will be considered against the manifest weight of the evidence 'only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on evidence.' " *In re Louis S.*, 361 Ill. App. 3d 774, 779, 838 N.E.2d 226, 231 (2005) (quoting *In re John R.*, 339 Ill. App. 3d 778, 781, 792 N.E.2d 350, 353 (2003)).

¶ 29 *2. The Evidence Was Sufficient To Find Respondent Subject to Involuntary Medication*

¶ 30 To authorize the involuntary administration of psychotropic medication, section 2-107.1(a-5)(4) of the Mental Health Code requires the trial court to find the following factors by clear and convincing evidence:

"(A) That the recipient has a serious mental illness or developmental disability.

(B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following:

(i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.

(C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.

(D) That the benefits of the treatment outweigh the harm.

(E) That the recipient lacks the capacity to make a reasoned decision about the treatment.

(F) That other less restrictive services have been explored and found inappropriate.

(G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment." 405 ILCS 5/2-107.1(a-5)(4) (West 2012).

¶ 31 The State contends the evidence was sufficient to sustain the trial court's order authorizing the involuntary administration of psychotropic medication. We agree.

¶ 32 In this case, the State presented the only evidence: the testimony of Dr. Patibandla and three exhibits. Dr. Patibandla testified (1) respondent had been diagnosed with schizoaffective disorder for the past 10 years; (2) respondent's ability to function had deteriorated

by way of his inability to carry on a conversation, to work with his attorney in his criminal case, and to participate in treatment groups; (3) respondent engaged in threatening behavior by way of his aggression when he was not medicated; (4) he believed the symptoms were continuing at the time of the hearing; (5) he believed, within a reasonable degree of psychiatric certainty, the benefits of the proposed treatment clearly outweighed the potential harm based on respondent's improvement while on the proposed medication and the absence of any side effects in respondent; (6) respondent lacked the capacity to make a reasoned decision about his treatment by way of respondent's belief he did not have a mental illness and did not need medication and respondent's lack of insight into his illness; (7) less restrictive services such as group therapy were explored and found inappropriate by way of respondent's refusal to participate; (8) the additional tests and procedures were necessary for the safe and effective administration of the proposed medication and were standard for this kind of medication. The trial court considered this evidence and concluded the State had clearly and convincingly satisfied the requirements of section 2-107.1(a-5)(4) of the Mental Health Code. Based on the evidence in the record, an opposite conclusion is not apparent, and thus, the trial court's order authorizing the involuntary administration of psychotropic medication was proper.

¶ 33 Respondent argues the record is "devoid of any reference to 'threatening or disruptive behavior.' " Further, respondent argues, Dr. Patibandla actually denied respondent was paranoid or aggressive. This contention is simply incorrect. Instead, Dr. Patibandla testified respondent was aggressive when not on medication and his aggression subsided when on the proposed medication.

¶ 34 Respondent also argues the State failed to meet its burden of proof on whether the

benefits of the proposed treatment outweighed the harm. Specifically, respondent contends Dr. Patibandla failed to explain the possible side effects of the proposed medication. The possible side effects of the proposed medication were presented to the trial court by means of an exhibit listing the side effects of each proposed medication. Respondent fails to cite any authority supporting his position this evidence was somehow insufficient to establish the possible harm of the proposed treatment. In essence, respondent would have us impose a requirement on the State to explain through testimony each side effect of every proposed medication in these proceedings. We decline to impose such a requirement.

¶ 35 C. The Length of the Trial Court's Order

¶ 36 Respondent contends the trial court erred in entering a 180-day involuntary medication order. Specifically, respondent contends the order "should not have been automatically entered absent Dr. Patibandla's documented need for that extreme request." Instead, respondent contends, the need for such an order should have been documented and requested by the treating doctor and not initiated by the court. Respondent cites one case in support of this argument, *In re C.E.*, 161 Ill. 2d 200, 228-30, 641 N.E.2d 345, 358-59 (1994), and he does so for the proposition that the purpose of involuntary medication proceedings is to quickly and efficiently return respondent to productive, self-reliant living—not for the proposition the State is required to request an order lasting 180 days.

¶ 37 Respondent would have this court construe section 2-107.1 to require the State to request the court to enter an order of such length. We find no basis for such a requirement and decline to do so. Instead, section 2-107.1(a-5)(5) of the Mental Health Code provides as follows:

"(5) In no event shall an order issued under this Section be

effective for more than 90 days. A second 90-day period of involuntary treatment may be authorized pursuant to a hearing that complies with the standards and procedures of this subsection (a-5). *Thereafter, additional 180-day periods of involuntary treatment may be authorized pursuant to the standards and procedures of this Section without[] limit.*" (Emphasis added.) 405 ILCS 5/2-107.1(a-5)(5) (West 2012).

¶ 38 In this case, Dr. Patibandla testified this was the third petition for the involuntary administration of psychotropic medication concerning respondent. Nothing in the record indicates otherwise. In addition, the trial court's order stated the treatment period was "not to exceed" 180 days. The order did not mandate treatment for 180 days, nor could it, as subsection (a-5)(6) provides complete discretion *not* to administer any authorized treatment. 405 ILCS 5/2-107.1(a-5)(6) (West 2012). Accordingly, we find the length of the trial court's order was proper.

¶ 39 D. The Trial Court's Judicial Notice of Prior Proceedings

¶ 40 Respondent contends the trial court improperly took judicial notice of testimony from a past hearing involving respondent. Respondent's counsel failed to object during the hearing and did not file a posthearing motion containing a claim of error. On appeal, respondent argues the court's notice of the testimony constitutes plain error and warrants reversal.

¶ 41 As a general rule, issues raised for the first time on appeal are forfeited. *In re B.K.*, 362 Ill. App. 3d 324, 329, 839 N.E.2d 1111, 1115 (2005). A court of review, however, may review otherwise forfeited issues in mental health proceedings pursuant to the plain-error doctrine. *In re Joseph P.*, 406 Ill. App. 3d 341, 347, 943 N.E.2d 715, 721 (2010). "Courts may

address an otherwise forfeited issue under the plain-error exception to the forfeiture rule when the evidence is closely balanced or when an error is so fundamental a defendant may have been deprived of a fair hearing." *Id.*

¶ 42 In this case, the evidence presented overwhelmingly supported the trial court's decision to authorize the involuntary administration of psychotropic medication. Moreover, we cannot say respondent was deprived of a fair hearing. Thus, the court's notice of the prior proceeding involving respondent, if error, did not rise to the level of plain error.

¶ 43 E. The Trial Court's Written and Oral Findings

¶ 44 Respondent contends the trial court's written and oral findings did not comply with section 3-816 of the Mental Health Code (405 ILCS 5/3-816 (West 2012)). Respondent does not, however, state how the court failed to comply with section 3-816 of the Mental Health Code. Respondent instead makes a blanket assertion the court's failure to make written findings of fact and conclusions of law warrants reversal, citing *In re Lance H.*, 402 Ill. App. 3d 382, 385-90, 931 N.E.2d 734, 737-42 (2010) and *In re James S.*, 388 Ill. App. 3d 1102, 1105-07, 904 N.E.2d 1072, 1075-77 (2009). Respondent fails to show how the court's oral and written findings were deficient.

¶ 45 Courts of review are entitled to have the issues clearly defined and "[b]are contentions in the absence of argument or citation of authority do not merit consideration on appeal and are deemed waived." *Country Mutual Insurance Co. v. Styck's Body Shop, Inc.*, 396 Ill. App. 3d 241, 254, 918 N.E.2d 1195, 1207 (2009) (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682, 624 N.E.2d 928, 931 (1993)). It is not this court's function or obligation to act as an advocate or search the record for error. *Id.* at 255, 918 N.E.2d at 1207.

Accordingly, respondent has forfeited any argument as to the trial court's alleged violation of section 3-816 of the Mental Health Code.

¶ 46

III. CONCLUSION

¶ 47

For the reasons stated, we affirm the trial court's judgment.

¶ 48

Affirmed.